

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 251 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No.

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VINOD KANTILAL PATEL

Versus

DR.SURESH G THAKER

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Appearance:

MR MB GANDHI for Revisioner  
MS MEGHA JANI for Respondent No. 1 & 2  
SERVED BY RPAD - (N) for Respondent No. 3  
MR BG JANI for Respondent No. 4  
MR DAVE APP for Respondent No. 5

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/08/1999

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned advocates Ms. Megha Jani for respondent Nos. 1 and 2, Mr. B.G.Jani for the respondent No.3 and 4 and Mr. Dave, learned APP for respondent No.5. At the request, the matter is finally heard and decided today.

2. The brief facts of the case are as under :

The revisioner had lodged a complaint before the Judicial Magistrate, First Class, Jamnagar, vide M. Case

No.117/95, against the present respondent Nos. 1 to 4 for the offence punishable under Section 406, 420 and 506 (2) of the Indian Penal Code. The complaint was sent to the police for investigation. After investigation, the Investigating Agency submitted the report seeking summary "B" with prosecution. The learned Magistrate after hearing the parties passed an order on 13-2-97 for issuance of process for the offence under Section 406 of the Indian Penal Code only. The revisioner who was the complainant did not challenge the remaining part of the order going against him. The said order was carried by respondent Nos. 1 and 2 herein in a Criminal Revision Application before the Sessions Court at Jamnagar vide Criminal Revision Application No.31/97. The learned Addl. Sessions Judge after hearing the parties particularly the present revisioner, the state and respondent Nos. 1 and 2 herein rendered the judgment and order on 15-1-98 dismissing the complaint against all the accused under Section 406 of the IPC. It is this order by which the present revisioner is aggrieved and has approached this Court with this Criminal Revision Application.

3. Heard Mr. M.B.Gandhi, learned advocate for the revisioner, Ms. Jani learned advocate for respondent Nos. 1 and 2 and Mr.B.G.Jani, learned advocate for the respondent Nos. 3 and 4 and Mr. Dave, learned A.P.P. for respondent No.5- the State of Gujarat.

4. Mr. Gandhi submitted that the learned Addl. Sessions Judge fell into an error of entertaining a revision application against the order of learned J.M.F.C., issuing process, as the same is an interlocutory order. He pressed into service a couple of decision of the Apex Court. Mr. Gandhi's another submission is that the learned Magistrate has passed the order after considering all materials on record. In a criminal matter the learned Addl. Sessions Judge has observed that there was no privity of contract between the complainant and the accused namely respondent Nos. 1 and 2 which is an error, ex-facie. Mr. Gandhi further submitted that factually also the story of the complainant does not synchronize with the events. He submitted that if the shares were stolen somewhere in April or May 1994, how the transfer forms could have been executed and shares delivered somewhere around July 1994 and if the company has received a communication from the registered share holders about the loss of the shares, how respondent Nos. 3 and 4 could have returned the shares to the transferee Kanwarpalsingh. The company ought to have seized the shares and given it to the

respondent Nos. 1 and 2 in ordinary course, but the company has not done so, and therefore, the company also is acting hand in glove with the registered share holders. Under the circumstances, the learned Addl. Sessions Judge ought not to have interfered with the order.

5. Ms. Jani on the other hand hence produced a xerox copy of the report of the Investigating Agency seeking summary "B" with prosecution. Her case is that respondent Nos. 1 and 2 have never entered into any transaction of sale with either the complainant or Kanwarpalsingh. They have not received any consideration, and therefore, there is no question of any entrustment or breach of trust. The signatures on the transfer forms may have been found to be correct as the shares along with transfer forms were given by respondent Nos. 1 and 2 to their agent Mr. Degda from whose possession the shares are claimed to have been stolen. The petitioner will have no locus for lodging a complaint as there was no transaction between the complainant and respondent Nos. 1 and 2 and therefore, the learned Addl. Sessions Judge was right in interfering with the order. So far as maintainability of that revision application is concerned, reliance is placed on a decision Rajendrakumar Sitaram Pande vs. Uttam and another, reported in (1999) 3 S.C.C., 134, wherein it has been categorically held that an order issuing process cannot be considered as interlocutory order. This decision is directly on the point and later in point of time as compared to the decision relied upon by Mr. Gandhi.

6. Mr. B.G.Jani, learned advocate appearing for the respondent Nos. 3 and 4 submitted that there is no allegation against the company and there cannot be any. The complainant will have no right so far as the shares are concerned, and therefore, the order of the learned Addl. Sessions Judge may not be interfered with. Mr. Dave, learned A.P.P. submitted that the Investigating Agency has, after due investigation submitted a detailed report which may be taken into consideration besides the order of the learned Magistrate.

7. Having regard to the contentions raised by the parties, it appears that the petitioner was the complainant and according to his own case, the shares were purchased by one Kanwarpalsingh through him. There is no entrustment of any money by the complainant when admittedly the transaction took place between Kanwarpalsingh and respondent Nos. 1 and 2. Contemporaneous record is there in the nature of telegram

and letter received by the company, respondent No.4 to indicate that the shares were lost. These factors are considered by the learned Addl. Sessions Judge while passing the impugned order. The Investigating Agency has thoroughly investigated the complaint and has thereafter come to the conclusion that the complaint is false, and therefore, a summary "B" with prosecution was sought. In this view of the matter, it cannot be said that the learned Addl. Sessions Judge has committed any error in coming to the conclusion of dismissing the complaint and order of J.M.F.C. thereunder. May be the observations regarding privity of contract, forming part of reasoning is not clad in a fine and legal language, but the meaning conveyed thereby and conclusion arrived at is not erroneous. The complainant had no locus to lodge the complaint and had no cause of action. Money, i.e. the price of share that may have been paid, if at all, would be by Kanwarpalsingh, as complainant is only a link between the vendor and the buyer. There is no entrustment by the complainant of any property, there is no parting with property by the complainant and therefore, the complaint deserves to be quashed. Under the circumstances, this Court is not inclined to interfere with the order of the learned Addl. Sessions Judge impugned in this petition. Further, it may be noted that the point raised by Mr. Gandhi, learned advocate for the petitioner that how the shares could have been delivered somewhere in July 1994 if they were lost, stands explained during the investigation also and that the version of the respondent Nos. 1 and 2 is supported by contemporaneous record. Apart from this, as the complainant himself has no locus, there is no need for entering into other merits or demerits of the complaint or the case of the defence. No illegality, impropriety or incorrection is shown or otherwise found in the impugned order. The petition, therefore, deserves dismissal and the same is therefore, dismissed. Rule discharged.

17-8-99 ( A.L.Dave, J.)

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